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Cases, Regulations, and Statutes

Robert P. Achenbach Jr
Iowa State University

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ADVERSE POSSESSION

CONTINUOUS USE. The plaintiff purchased land which had a fence which extended onto the defendant's land. The plaintiff assumed that the fence was the true boundary of the property. The plaintiff or predecessors used the property for eight years to pasture goats and then used the property for three years to pasture horses, although the land was not used for pasturing for two to three month periods. A mobile home also was partially located on the disputed land and the plaintiff used the property for gardening. The plaintiff sought to quiet title to the portion of land inside the fence by adverse possession. The defendant argued that the plaintiff had not shown 10 years of continuous adverse use of the disputed property because the pasturing of horses was not continuous. The court held that the breaks in pasturing horses was not sufficient to disturb the continuity of use and that the plaintiff acquired title to the disputed land by adverse possession. **Manderscheid v. Dutton, 88 P.3d 281 (Or. Ct. App. 2004)**.

BANKRUPTCY

GENERAL

FEDERAL FARM PROGRAM PAYMENTS. The debtor planted seed wheat and seed cotton crops in 2001, and the crops suffered from drought. The debtor filed for Chapter 12 in May 2002 and the case was converted to Chapter 7 in January 2003. The Agricultural Assistance Act of 2003 was signed into law on February 20, 2003 and provided for payments to farmers for weather-related crop losses. In January 2004 the debtor applied for payments for the 2001 crop losses and received a payment in February 2004. The court held that the payments were estate property because the payments arose out of the prepetition crops. The court noted that all of the conditions for eligibility for the drought payments existed prior to the bankruptcy filing and the vesting of the rights, by passage of the legislation and the debtor's application for the payments, to the payments was the only event which occurred post-petition. ***In re* Bracewell, 310 B.R. 472 (Bankr. M.D. Ga. 2004)**.

SETOFF. The debtor was a cotton farmer who owed money to the FSA. The debtor applied for loan deficiency payments (LDPs) after filing for Chapter 7 bankruptcy and the FSA sought to set off the LDPs against the debtor's debt to the FSA. The debtor argued that, although the debtor was eligible for the LDPs before filing for bankruptcy, the entitlement to the LDPs arose after the petition because the debtor had the option not to apply for the LDPs. The court held that the only requirement for prepetition debt status was that the debtor became fully entitled to the LDPs before filing for bankruptcy and that the debtor's election to file made the debt contingent and unliquidated which did not affect the FSA's right to set off the LDPs against the FSA claims. ***In Re* Gibson, 308 B.R. 763 (Bankr. N.D. Tex. 2002).**

FEDERAL TAX

DISCHARGE. The debtor failed to file tax returns and make tax payments for 1983 through 1990. The debtor had self-employment income and did not make any estimated tax payments during those years. The IRS instituted an audit and the debtor cooperated with the IRS in determining the debtor's taxable income for the years involved. The IRS prepared a Form 4549 for each tax year, the debtor signed each form, and the IRS accepted each form as determining the debtor's tax liability for each year. The debtor filed for Chapter 7 in 1997 and argued that the taxes for these years were dischargeable. The IRS argued that the taxes were nondischargeable because the debtor filed to file a return for each year. The court held that the Form 4549 qualified as a return for these years and the taxes were not nondischargeable because of a failure to file a return. The court remanded the case to determine the possibility that the taxes could still be nondischargeable for willful attempt to evade taxes. On remand, the Bankruptcy Court held that the debtor's failure to pay taxes and file returns when due were sufficient to demonstrate an intent to evade payment of the taxes; therefore, the taxes were nondischargeable under Section 523(a)(1)(C). ***In re* Mathis, 310 B.R. 468 (Bankr. S.D. Fla. 2004), *on rem. from*, 249 B.R. 324 (S.D. Fla. 2000)**.

REFUND. The debtors timely filed their 2001 federal income tax return which claimed a refund. The debtors elected to apply the refund to future tax liability. The debtors filed for Chapter 7 shortly after filing the tax return. The refund was applied to the 2002 tax liability, resulting in no refund for 2002. The trustee sought to recover the 2001 refund, arguing that the application to the 2002 taxes by the debtors was a preferential or fraudulent payment which was voidable under Section 548. The debtors argued that, once the election was made to apply the refund to the next year's tax, the election was irrevocable and the refund was not included in the bankruptcy estate. The court held that the debtors did retain on the petition date a valuable asset in the credit to be applied to the 2002 taxes; therefore, the debtors were required to include that asset in the bankruptcy estate and the trustee could recover the value of that asset for the estate. ***In re* Nichols, 309 B.R. 41 (Bankr. D. Ariz. 2004)**.

ELECTRICITY

NET METERING. The plaintiffs were farmers who built wind electricity generators on their property and sought to sell their excess electricity to the defendant rural electric cooperative. The defendant charged its customers a rate greater than the rate paid to customers for excess electricity generated back to the defendant. The defendant argued that this difference in rate allowed for a separate billing of electricity purchased by the plaintiffs and a separate billing for electricity generated by the plaintiffs. The plaintiffs argued that the billing should be based on net usage during each regular billing period, thus providing for the same rate for consumed and generated electricity. The court held that a separate billing system violated the public policy of the Public Utility Regulatory Policies Act (PURPA), 16 U.S.C. § 824a-3, in that it would discourage cogeneration of electricity by customers. The court also cited the FERC regulatory ruling in MidAmerican Energy Co., 94 F.E.R.C. 61 (March 28, 2001) that "net billing" was the method most consistent with the PURPA. The court also ordered the defendant to disclose its avoided-cost information which is used to determine the price of the excess electricity generated by the plaintiffs to be netted against the rate charged for electricity used by the plaintiffs. **Windway Technologies, Inc. v. Midland Power Coop., 2004 Iowa Sup. LEXIS 213 (Iowa 2004)**.

FEDERAL AGRICULTURAL PROGRAMS

CROP INSURANCE. The FCIC has issued proposed regulations amending the Nursery Crop Insurance provisions to (1) make container and field grown plants separate crops; (2) provide coverage for plants in containers that are equal to or greater than one inch in diameter; (3) provide separate basic units by share which will be further divided into basic units by plant type and a basic unit for all liners when additional coverage is purchased; (4) offer one coverage level and price election for each basic unit when additional coverage is purchased; (5) offer optional units by location for field grown plants; (6) allow increases to the plant inventory value report if made on or before August 31 of the crop year; (7) change the provision that precludes acceptance of an application for insurance for any current crop year after May 31 of the crop year; and (8) make other policy changes to improve coverage of nursery plants. **69 Fed. Reg. 48166 (Aug. 9, 2004)**.

The FCIC has adopted as final regulations amending the catastrophic risk endorsement to revise the definition of "approved yield" to allow for the substitution of 60 percent of the transitional yield, change the administrative fee from $60 to $100, revise the requirement that the producer pay the administrative fee, and remove all references to limited coverage because, as a result of changes to the subsidy levels and administrative fee, there is no longer a distinction between limited and additional coverage. The regulations also amend the group risk plan of insurance regulations to remove all references to limited coverage because, as a result of changes to the subsidy levels and administrative fee, there is no longer a distinction between limited and additional coverage; revise the definition of "additional coverage" to incorporate limited coverage; change the administrative fee from $60 to $100 for catastrophic risk protection coverage, remove all references to administrative fees for limited coverage, change the administrative fee from $20 to $30 for all coverages in excess of catastrophic risk protection; and revise the requirement that the producer pay the administrative fee. The regulations also amend the common crop insurance regulations to remove all references to limited coverage because, as a result of changes to the subsidy levels and administrative fee, there is no longer a distinction between limited and additional coverage; revise the definition of "additional coverage" to incorporate limited coverage and the definition of "approved yield" to allow for the substitution of 60 percent of the transitional yield; remove all references to administrative fees for limited coverage and change the administrative fee from $20 to $30 for all coverages in excess of catastrophic risk protection; and revise the requirement that the producer pay the administrative fee. **65 Fed. Reg. 48651 (Aug. 10, 2004)**.

KARNAL BUNT. The APHIS has adopted as final regulations adding areas of Arizona to the list of regulated areas and removing areas in Riverside, CA from the list of regulated areas. **69 Fed. Reg. 50995 (Aug. 17, 2004)**.

FEDERAL ESTATE AND GIFT TAXATION

GROSS ESTATE. The decedent and spouse established a limited liability company (LLC) and contributed to the LLC a life insurance policy on the decedent's life. The transfer was made within three years of the death of the decedent. One-half of the value of the policy was credited to the decedent and one-half to the spouse. The LLC was made the beneficiary of the policy. The IRS ruled that one-half of the life insurance policy was included in the decedent's estate under I.R.C. § 2035(a) because one-half was credited to the spouse's share of the LLC. The other half was included in the decedent's estate under I.R.C. § 2035(a) because it was made within three years of death for less than adequate consideration and without a business purpose. One-half of the proceeds of the policy were included in the decedent's estate under I.R.C. § 2035(a), also because the transfer was made within three years of death and the proceeds would have been included in the decedent's estate if the policy was retained by the decedent. The IRS also ruled that the estate was not entitled to any marital deduction for the proceeds of the policy because the LLC was the beneficiary and not the surviving spouse. **T.A.M. Ltr. Rul. 200432015, March 10, 2004**.

The decedent's spouse made gifts to various individuals, trusts and charitable organizations three years and one day before the decedent's death. The couple elected to treat one-half of the gifts as made by each and they filed Forms 709 with gift tax paid. On the estate tax return the gifts were excluded from the estate and the estate tax return included a statement that the gifts were excluded because they were made more than three years before the decedent's death. The IRS ruled that the gifts were properly excluded because the three year look-back period begins on the date of the decedent's death. As the ruling states: "Thus, if a decedent had died on December 31, 2001 and the gift tax was paid for a gift made on December 31, 1998, the 3-year period that ends on December 31, 2001 began on January 1, 1999." **T.A.M. Ltr. Rul. 200432016, March 10, 2004**.

MARITAL DEDUCTION. The IRS has issued a revenue procedure which provides a simplified alternate method for certain executors of estates and trustees of trusts to request relief to make a late reverse qualified terminable interest property (QTIP) election under I.R.C. § 2652. This alternate method may be used in lieu of the normal letter ruling process. No user fee is charged for requests filed under this revenue procedure. The alternate method is allowed if the following requirements are met: (1) a valid QTIP election under I.R.C. § 2056(b)(7) was made for the property or trust on the federal estate tax return filed for the decedent's estate; (2) the reverse QTIP election was not made on the estate tax return as filed because the taxpayer relied on the advice and counsel of a qualified tax professional and that qualified tax professional failed to advise the taxpayer of the need, advisability, or proper method to make a reverse QTIP election; (3) the decedent has a sufficient amount of unused GST exemption, after the automatic allocation of the GST exemption under I.R.C. § 2632(e) and § 26.2632-1(d)(2), to result in a zero inclusion ratio for the reverse QTIP trust or property; (4) the estate is not eligible under Treas. Reg. § 301.9100-2(b) for an automatic 6-month extension; (5) the surviving spouse has not made a lifetime disposition of all or any part of the qualifying income interest for life in the QTIP trust or property; (6) the surviving spouse is alive or no more than 6 months have passed since the death of the surviving spouse; and (7) relief is requested by the executor in accordance with the revenue procedure. **Rev. Proc. 2004-47, I.R.B. 2004-32**.

VALUATION. The decedent had formed a family limited partnership (FLP) and transferred all of the stock in a wholly-owned corporation to the FLP in exchange for a small general partnership interest and a large limited partnership interest. The decedent then gave additional partnership interests to other family members and filed a gift tax return for the gifts. The IRS assessed additional gift taxes based upon an increased value of the FLP interests given. The FLP agreement limited the price and terms under which the FLP would be required to pay a partner for a partner's interest in the FLP under a right of first refusal. The agreement provided for such payment by promissory note, payable over a period not to exceed 15 years as set by the FLP. The estate applied a marketability discount based on the purchase restrictions. The IRS did not apply any discount, citing I.R.C. § 2703(a), which generally provides that, for purposes of calculating estate, gift, and generation-skipping taxes, the fair market value of property is to be determined without regard to: (1) any option, agreement, or other right to acquire or use the property at a price less than its fair market value; or (2) any restriction on the right to sell or use such property. In a hearing on a summary judgment motion, the court held that the purchase restrictions were subject to Section 2703(a) but an issue of fact remained as to whether the restrictions were eligible for the "safe harbor" exception of I.R.C. § 2703(b). The court noted that the restrictions met the requirements of Section 2703(b)(1) in that the restrictions had a bona fide business purpose. However, there remained genuine issues of material fact as to whether the restrictions was a testamentary device and ineligible for the "safe harbor" exception; therefore, summary judgment was denied. **Estate of Smith v. United States, 2004-2 U.S. Tax Cas. (CCH) ¶ 60,488 (W.D. Penn. 2004)**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The taxpayer was a corporation engaged in the logging business on timber land owned by the taxpayer, its shareholders, subsidiary corporations and third parties. The taxpayer purchased standing timber from unrelated parties either by whole parcels of land or as each group of trees was cut. The cut trees were sold and delivered to unrelated mills under contracts. The taxpayer did not replant the timberland cut and did not sell trees as plants. The taxpayer maintained its books and filed income taxes based on the cash method of accounting. The court held that the imposition of accrual method accounting by the IRS was proper because the taxpayer was required to maintain an inventory of the trees, since the taxpayer purchased the trees, the trees were merchandise and the sale of the trees was a significant source of income for the taxpayer.The cutting of trees on the taxpayer's own property was not a separate and distinct business. **Herbert C. Haynes, Inc. v. Comm'r, T.C. Memo. 2004-185**.

CORPORATIONS.

DEFINITION. The IRS has issued proposed regulations providing clarification of the definitions of a corporation and a domestic entity in circumstances where the business entity is considered to be created or organized in more than one jurisdiction. The proposed regulations clarify that a dually chartered entity is domestic if it is organized as any form of entity in the United States, regardless of how it is organized in any foreign jurisdiction. **69 Fed. Reg. 49809 (Aug. 12, 2004)**.

REORGANIZATION. The IRS has withdrawn proposed regulations, , regarding the effect of certain transfers of assets or stock on the qualification of certain transactions as reorganizations under section 368(a). **69 Fed. Reg. 51026 (Aug. 17, 2004)**. New proposed regulations have been issued that provide that a transaction otherwise qualifying as a reorganization will not be disqualified as a result of a subsequent distribution of the acquired assets or stock if (1) no transferee receives substantially all of the acquired assets, substantially all of the assets of the acquired or surviving corporation in a transaction otherwise qualifying as a reorganization, or stock constituting control of the acquired corporation, (2) the transferee is either a member of the qualified group or a partnership the business of which is treated as conducted by a member of the qualified group, and (3) the COBE requirement is satisfied. **69 Fed. Reg. 51209 (Aug. 18, 2004)**.

The IRS has issued proposed regulations governing the requirements for meeting the requirement of continuity of interest

(COI) for purposes of the nonrecognition of gain or loss in a corporate reorganization. The proposed regulations provide that in determining whether the COI requirement is satisfied, the consideration to be exchanged for the proprietary interests in the target corporation is valued as of the end of the last business day before the first date there is a binding contract to effect the potential reorganization, provided the consideration to be provided to the target corporation shareholders is fixed in such contract and includes only stock of the issuing corporation and money. For this purpose, a binding contract is an instrument enforceable under applicable law against the parties to the instrument. Because the terms of a tender offer that is subject to Section 14(d) of the Securities and Exchange Act of 1934 and the regulations promulgated thereunder are fixed in a manner similar to those of a binding contract, the proposed regulations provide that such a tender offer, even if not pursuant to a binding contract, will be treated as a binding contract for purposes of these regulations. The proposed regulations provide that the presence of a condition outside the control of the parties shall not prevent an instrument from being a binding contract. Finally, the proposed regulations provide that consideration is fixed if the contract states the exact number of shares of the issuing corporation and the exact amount of money, if any, to be exchanged for the proprietary interests in the target corporation. **69 Fed. Reg. 48429 (Aug. 10, 2004)**.

The IRS has issued guidance that explains both the standard and alternate procedures for preparing and filing employment tax returns after a statutory merger, acquisition or consolidation. The procedure also explains the new Schedule D (Form 941), Report of Discrepancies Caused by Acquisition, Statutory Mergers or Consolidations. **Rev. Proc. 2004-53, I.R.B. 2004-34**.

DISASTER LOSSES. On August 3, 2004, the President determined that certain areas in New York were eligible for assistance under the Disaster Relief and Emergency Assistance Act (42 USC 5121) as a result of severe storms and flooding, which began on May 13, 2004. **FEMA-1534-DR**. On August 3, 2004, the President determined that certain areas in Kansas were eligible for assistance under the Act as a result of severe storms, flooding and tornadoes, which began on June 12, 2004. **FEMA-1535-DR**. On August 6, 2004, the President determined that certain areas in West Virginia were eligible for assistance under the Act as a result of severe storms, flooding and landslides, which began on July 22, 2004. **FEMA-1536-DR**. On August 6, 2004, the President determined that certain areas in Kentucky were eligible for assistance under the Act as a result of severe storms and flooding, which began on July 13, 2004. **FEMA-1537-DR**. On August 6, 2004, the President determined that certain areas in Pennsylvania were eligible for assistance under the Act as a result of severe storms and flooding, which began on August 1, 2004. **FEMA-1538-DR**. Accordingly, taxpayers in the affected areas who sustained losses may deduct them on their 2003 federal income tax returns.

PARTNERSHIPS

DISREGARDED ENTITY. The IRS has issued proposed regulations which clarify the existing regulations concerning when a partner may be treated as bearing the economic risk of loss for a partnership liability based upon a payment obligation of a business entity that is disregarded as separate from its owner under I.R.C. §§ 856(i), 1361(b)(3), or Treas. Reg. §§ 301.7701-1 through 301.7701-3. The proposed regulations provide that in determining the extent to which a partner bears the economic risk of loss for a partnership liability, payment obligations of a disregarded entity are taken into account for purposes of I.R.C. § 752 only to the extent of the net value of the disregarded entity as of the date on which the partnership determines the partner's share of partnership liabilities pursuant to Treas. Reg. §§ 1.752-4(d) and 1.705-1(a). However, the proposed regulations do not apply to an obligation of a disregarded entity to the extent that the owner of the disregarded entity otherwise is required to make a payment (that satisfies the requirements of Treas. Reg. § 1.752-2(b)(1)) with respect to such obligation of the disregarded entity. Under the proposed regulations, the net value of a disregarded entity equals the fair market value of all assets owned by the disregarded entity that may be subject to creditors' claims under local law, including the disregarded entity's enforceable rights to contributions from its owner but excluding the disregarded entity's interest in the partnership (if any) and the fair market value of property pledged to secure a partnership liability (which is already taken into account under Treas. Reg. § 1.752-2(h)(1)), less obligations of the disregarded entity that do not constitute, and are senior or of equal priority to, payment obligations of the disregarded entity. **69 Fed. Reg. 49832 (Aug. 12, 2004)**.

The taxpayer was a limited partnership and the sole general partner was a limited liability company (LLC) that was treated as a disregarded entity. The LLC was designated as the taxpayer's tax matters partner (TMP). The IRS ruled that, because the partnership had a pass-through partner, the small partnership exception to the TEFRA unified partnership audit and litigation procedures under I.R.C. § 6231(a)(1)(B) did not apply to the partnership. **Rev. Rul. 2004-88, I.R.B. 2004-32.**

PENSION PLANS. The taxpayer requested a distribution from a Section 401(k) pension plan and used the funds to purchase a residence. The closing on the house purchase did not occur for almost a month and the check for the money was held in escrow until the closing, which occurred within 60 before the taxpayer borrowed other money to effect a rollover of the funds to an IRA. The taxpayer sought a waiver of the 60 day rollover period, arguing that the taxpayer did not have access to the funds until the escrow account was released. The IRS denied a waiver because the delay in the rollover was caused by the taxpayer's act of purchasing the residence with the money and not due to circumstances beyond the taxpayer's control. **Ltr. Rul. 200432025, no date given**.

RETURNS. The IRS has announced that income tax preparers, as defined in Treas. Reg. § 301.7701-15(a), may use alternative methods of signing original and amended tax returns and requests for filing extensions. Signatures may be affixed by means of rubber stamp, mechanical device, or computer software program. Return preparers who use any of these alternative methods are personally liable for affixing their signatures to the return or extension request. The alternative method is not available for any other type of document for which manual signatures are currently required, including elections, applications for changes in accounting method, powers of attorney or consent forms. Tax payers must still use manual signatures. **Notice 2004-54, I.R.B. 2004-34**.

The IRS has announced that it will provide special tax relief for taxpayers in the presidentially declared disaster areas struck by Tropical Storm Bonnie and Hurricane Charley, beginning August 11, 2004. The IRS is granting affected taxpayers extensions to file or pay taxes for the period that runs from August 11, 2004, through October 15, 2004. Specifically, taxpayers will have until the last day of the extension period to file tax returns or make tax payments, including estimated tax payments that would otherwise be due during this period under an original or extended due date. Interest and late filing or late payment penalties that would apply will be abated. Taxpayers should put the assigned disaster designation in red ink at the top of the return. **IR-2004-108**.

S CORPORATIONS

ACCOUNTING METHOD. The IRS has issued proposed regulations regarding LIFO recapture by corporations converting from C corporations to S corporations. The proposed regulations provide guidance on the LIFO recapture requirement under I.R.C. § 1363(d)(1) when the corporation holds inventory accounted for under the last-in, first-out (LIFO) method indirectly through a partnership. The proposed regulations affect C corporations that own interests in partnerships holding LIFO inventory and that elect to be taxed as S corporations or that transfer such partnership interests to S corporations in nonrecognition transactions. The proposed regulations also affect S corporations receiving such partnership interests from C corporations in nonrecognition transactions. **69 Fed. Reg. 50109 (Aug. 13, 2004)**.

TRUSTS. The decedent's will had created two trusts and funded the trusts with stock in one corporation. Each trust had only one income beneficiary. The IRS ruled that the trusts were eligible Subchapter S trusts if the corporation made an S corporation election. **Ltr. Rul. 200433012, April 29, 2004**.

SAFE HARBOR INTEREST RATES
September 2004

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	2.34	2.33	2.32	2.32
110 percent AFR	2.58	2.56	2.55	2.55
120 percent AFR	2.82	2.80	2.79	2.78
		Mid-term		
AFR	3.84	3.80	3.78	3.77
110 percent AFR	4.22	4.18	4.16	4.14
120 percent AFR	4.61	4.56	4.53	4.52
		Long-term		
AFR	5.03	4.97	4.94	4.92
110 percent AFR	5.54	5.47	5.43	5.41
120 percent AFR	6.05	5.96	5.92	5.89

Rev. Rul. 2004-69, I.R.B. 2004-36.

SALE OF RESIDENCE. The IRS has adopted as final regulations relating to the exclusion of gain from the sale or exchange of a taxpayer's principal residence in the case of a taxpayer who has not owned and used the property as the taxpayer's principal residence for two of the preceding five years or who has excluded gain from the sale or exchange of a principal residence within the preceding two years. Under the regulations, a reduced maximum exclusion limitation is available to a taxpayer who has sold or exchanged property owned and used as the taxpayer's principal residence for less than two of the preceding five years or who has excluded gain on the sale or exchange of a principal residence within the preceding two years. This reduced maximum exclusion applies only if the sale or exchange is primarily by reason of a change in place of employment, health, or unforeseen circumstances. The taxpayer's primary reason for the sale or exchange is determined based on the facts and circumstances. The regulations provide a list of factors that may be relevant in determining the taxpayer's primary reason. In addition, for each of the three grounds for claiming a reduced maximum exclusion, the regulations provide a general definition and one or more safe harbors. See Harl, "More Detail on the Principal Residence Exclusion" 14 *Agric. L. Dig*. 9 (2003). **69 Fed. Reg. 50302 (Aug. 16, 2004)**.

WAGES. The taxpayers were employed as tenured public school teachers who elected to participate in an early retirement program under which they received payments over five years in exchange for taking early retirement. The taxpayers argued that the payments were not subject to FICA withholding because the payments were made in exchange for the taxpayer's tenure, a property right. The court held that the payments were subject to FICA withholding because the payments arose out of the taxpayer's employment. The court declined to follow the holding in *North Dakota State University v. United States, 255 F.3d 599 (8th Cir. 2001),* noting that the tenure in the present case was earned merely by length of employment and not through demonstrated and evaluated proficiency. **Appoloni v. United States, 2004-2 U.S. Tax Cas. (CCH) ¶ 50,333 (W.D. Mich. 2004)**.

STATE REGULATION OF AGRICULTURE

CHECK-OFF. The plaintiff was an alligator farmer subject to a fee imposed by the Louisiana Department of Wildlife and fisheries which used the fees to support marketing of alligator products. The plaintiff objected to the fees as violating the plaintiff's First Amendment free speech rights because it forced the plaintiff to participate in advertising which did not apply to the plaintiff's specialized alligator products. The court held that the marketing was not governmental speech and upheld the trial court's injunction against the fees as violating the plaintiff's First Amendment free speech rights. **Pelts & Skins, LLC v. Landreneau, 365 F.3d 423 (5th Cir. 2004), aff'g on point, 259 F. Supp.2d 482 (M.D. La. 2003)**.

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CITATION UPDATES

Okerlund v. United States, 365 F.3d 1044 (Fed. Cir. 2004), *aff'g*, 53 Fed. Cl. 341 (2002) (valuation of stock) see p. 68 *supra*.

IN THE NEWS

DAIRY CHECKOFF. The Bush administration has blocked a law that would have required dairy importers to pay fees to support dairy promotions such as "Got Milk?" The administration concluded that the legislation could subject the United States to international trade challenges. Because the U.S. dairy promotion program assesses fees only on dairy farmers in the 48 contiguous United States, charging those same fees to all imports could create the appearance of favorable treatment for the domestic industry, the Department of Agriculture says. The department acted on guidance provided by the U.S. Trade Representative's office, and both agencies propose that Congress rewrite the law so farmers in all 50 states (as well as the territories) pay the assessment. Rep. Tammy Baldwin, D-Wisconsin, plans to introduce legislation to do that this year. **The Associated Press.**

FARM LABOR. The National Agricultural Statistics Service has issued farm employment figures as of August 20, 2004. There were 1,293,000 hired workers on the nation's farms and ranches the week of July 11-17, 2004, up 2 percent from a year ago. Of these hired workers, 953,000 workers were hired directly by farm operators. Agricultural service employees on farms and ranches made up the remaining 340,000 workers. All NASS reports are available free of charge on the internet. For access, go to the NASS Home Page at: http:/www.usda.gov/nass/